Jaslinderjit Kaur Kenth a/p Malinderjit Singh v Helvinneer Singh a/l Amarjit Singh

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO BA-11A-13–12 OF 2023
CHOONG YEOW CHOY JC
24 JULY 2024

Family law — Divorce petition — Maintenance — Whether the conditions for the order of maintenance had been fulfilled — Whether there was assessment for order of maintenance — Married Women and Children (Maintenance) Act 1950 ss 3(1), (3) & 5 — Law Reform (Marriage and Divorce) Act 1976

Both appellant and respondent were just married on 1 October 2022 for a brief period of just two and a half months. The appellant commenced an action against the respondent at the magistrates court and sought payment of monthly maintenance of RM2,000 beginning from August 2023 and overdue monthly maintenance for the period of 16 December 2022 to July 2023. The learned magistrate dismissed the appellant's claim with costs of RM500. The learned magistrate referred to the conflicting accounts provided by both parties and concluded that the appellant had not presented sufficient evidence to substantiate claims of neglect and accordingly dismissed her claim for maintenance. On the issue of maintenance, the learned magistrate made reference to s 78 of the Law Reform (Marriage and Divorce) Act 1976 and rejected the claim. Thus, the appeal. The issues for consideration were: (a) whether the conditions for the order of maintenance had been fulfilled; and (b) whether there was assessment for order of maintenance.

Held, dismissing the appeal with costs:

(1) The court was of the considered view that the power to court to make an order for the maintenance of a wife or children during the subsistence of marriage under s 3 of the Married Women and Children (Maintenance) Act 1950 should be exercised if the following conditions are fulfilled, namely: (a) any person neglects or refuses to maintain his wife; and (b) the wife is unable to maintain herself. These conditions were not only to be read conjunctively but they could only be deemed as satisfied 'upon due proof thereof'. The court was satisfied that the learned magistrate had correctly addressed her mind to the above issues and did not run into error when she concluded that the appellant had not presented sufficient evidence to substantiate claims of neglect. On this ground alone, the learned magistrate was right in rejecting the appellant's claim (see paras 26–28).

(2) The principles as laid down in s 78 of the Law Reform (Marriage and Divorce) Act 1976 required the court to 'base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be'. In addition, the court shall also 'have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage'. The court was still of the view that the learned magistrate had arrived at the correct conclusion when she disallowed the appellant's claim. The decision of the magistrate court was affirmed (see paras 33 & 36–37).

[Bahasa Malaysia summary

Kedua-dua perayu dan responden baru sahaja berkahwin pada 1 Oktober 2022 untuk tempoh singkat hanya dua bulan setengah. Perayu memulakan tindakan terhadap responden di mahkamah majistret dan meminta bayaran nafkah bulanan sebanyak RM2,000 bermula Ogos 2023 dan nafkah bulanan tertunggak bagi tempoh 16 Disember 2022 hingga Julai 2023. Majistret yang bijaksana menolak tuntutan perayu dengan kos sebanyak RM500. Majistret yang bijaksana merujuk kepada akaun bercanggah yang dikemukakan oleh kedua-dua pihak dan membuat kesimpulan bahawa perayu tidak mengemukakan keterangan yang mencukupi untuk menyokong tuntutan pengabaian dan dengan itu menolak tuntutannya untuk nafkah. Mengenai isu nafkah, majistret yang bijaksana membuat rujukan kepada s 78 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 dan menolak tuntutan itu. Justeru, rayuan ini. Isu untuk pertimbangan adalah: (a) sama ada syarat untuk perintah nafkah telah dipenuhi; dan (b) sama ada terdapat taksiran untuk perintah nafkah.

Diputuskan, menolak rayuan dengan kos:

(1) Mahkamah berpendapat bahawa kuasa kepada mahkamah untuk membuat perintah bagi nafkah isteri atau anak-anak semasa tempoh perkahwinan di bawah s 3 Akta Perempuan Bersuami dan Anak-anak (Penguatkuasaan Nafkah) 1950 hendaklah dilaksanakan jika syarat-syarat berikut dipenuhi, iaitu: (a) mana-mana orang mengabaikan atau enggan terhadap nafkah isterinya; dan (b) isteri tidak dapat menafkahi dirinya. Syarat-syarat ini bukan sahaja untuk dibaca secara bersambung tetapi ia hanya boleh dianggap sebagai dipenuhi 'apabila bukti yang sewajarnya'. Mahkamah berpuas hati bahawa majistret yang bijaksana telah membuat keputusan dengan betul kepada isu-isu di atas dan tidak terkihlaf apabila dia membuat kesimpulan bahawa perayu tidak mengemukakan keterangan yang mencukupi untuk menyokong dakwaan pengabaian. Atas alasan ini sahaja, majistret yang bijaksana adalah betul dalam menolak tuntutan perayu (lihat perenggan 26–28).

(2) Prinsip-prinsip seperti yang dinyatakan dalam s 78 Akta Membaharui

Undang-Undang (Perkahwinan dan Perceraian) 1976 menghendaki mahkamah untuk 'mendasarkan pentaksirannya terutama sekali atas kemampuan dan keperluan pihak-pihak itu dengan tidak mengira kadar nafkah itu berbanding dengan pendapatan suami atau isteri itu, mengikut mana-mana yang berkenaan'. Di samping itu, mahkamah juga hendaklah 'mengambil kira darjah tanggungjawab yang diperuntukkan oleh mahkamah kepada tiap-tiap satu pihak terhadap kepecahbelahan perkahwinan itu'. Mahkamah masih berpandangan bahawa majistret yang bijaksana telah membuat kesimpulan yang betul apabila dia tidak membenarkan tuntutan perayu. Keputusan mahkamah majistret telah disahkan (lihat perenggan 33 & 36–37)]

Cases referred to

CKW v HSL [2022] MLJU 1361; [2022] MLRHU 1198, HC (refd)

Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863; [2008] 4 AMR 159; [2008] 4 CLJ 105; [2008] 1 MLRA 230, CA (refd)

Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (Responden Bersama) [2010] MLJU 1333; [2010] AMEJ 0290; [2011] 6 CLJ 782; [2010] 3 MLRH 308, HC (refd)

Shilashshree Shirely Gomez v Raymond Shilendran a/l Simon [2019] MLJU 1578; [2019] AMEJ 1615; [2019]CLJU 1977; [2019] MLRHU 1757, HC (refd)

V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie [1998] AMEJ 0189; [1999] 5 CLJ 474; [1998] 4 MLRH 112, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 77, 77(2), 78

Married Women and Children (Maintenance) Act 1950 ss 3, 3(1), (3), 5, 5(1)

Pramjit Kaur (Mann & Assoc) for the appellant.
S Sivaperumal (G Ram, Rozzeta & Assoc) for the respondent.

Choong Yeow Choy JC:

INTRODUCTION

[1] The present appeal brings into focus an important legislation that seeks to, amongst others, protect vulnerable parties in traditional family structures and the safeguarding of social welfare by preventing individuals from becoming destitute due to family breakdowns. This relevant piece of legislation is the Married Women and Children (Maintenance) Act 1950.

[2] The appellant (plaintiff in the magistrates court) sought relief under

s 3(1) and (3) of the aforementioned act but the appellant's claim was dismissed by the learned magistrate with costs.

THE CORE ISSUES

[3] The central issue at hand is whether the learned magistrate erred in law and/or in fact by dismissing the appellant's claim.

[4] From this primary issue arise the following subsidiary questions:

(a) whether the respondent (defendant in the magistrates court) has neglected or refused to provide maintenance for the appellant;

(b) whether the appellant is unable to support herself financially; and

(c) whether this case justifies the court making an order for the respondent to pay a monthly allowance for the appellant's maintenance.

[5] These issues are pivotal in determining the legal and factual basis for the appellant's claim and the subsequent decision by the court.

THE PARTIES AND THE SALIENT FACTS

[6] The appellant, Jaslinderjit Kaur Kenth a/p Malinderjit Singh, is the wife of the respondent.

[7] The respondent, Helvinneer Singh a/l Amarjit Singh, is the husband of the appellant.

[8] The appellant and the respondent were married on the first of October, 2022.

[9] Regrettably, they were not destined to live happily ever after as a married couple. The breakdown in their marriage occurred within a remarkably brief period of just two and a half months. The pertinent date was said to be the 16 December 2022.

PROCEEDINGS AT THE MAGISTRATES COURT

[10] The appellant commenced an action against the respondent at the magistrates court in August of 2023 and sought payment of monthly maintenance of RM2,000 beginning from August 2023 and overdue monthly maintenance for the period 16 December 2022 to July 2023.

[11] As noted, the learned magistrate dismissed the appellant's claim with costs of RM500.

[12] Regarding the issue of whether the appellant had been neglected by the respondent, the learned magistrate referred to the conflicting accounts provided by both parties. After reviewing these narratives, the magistrate concluded that the appellant had not presented sufficient evidence to substantiate claims of neglect.

[13] The learned magistrate substantiated this finding in para [13] of the grounds of judgment.

> [13] Berkenaan isu pengabaian plaintif oleh defendan, mahkamah telah merujuk kepada afidavit kedua-dua pihak. Plaintif menyatakan bahawa beliau telah diabaikan oleh defendan di rumah beralamat di No 19 Lorong Long, Taman Berkeley, 41150 Klang lebih kurang pada 16 Disember 2022 dengan berjanji akan datang semula untuk menjemput plaintif selepas Tahun Baru Cina. Selepas itu, defendan hanya menelefon dan memaklumkan ingin berpisah dengan plaintif. Manakala defendan pula menyatakan bahawa keluarga plaintif telah membawa plaintif ke Ipoh bagi temujanji doktor kerana defendan tidak boleh mengambil cuti untuk menghantar beliau bagi temujanji tersebut. Selanjutnya defendan juga memaklumkan bahawa pada 26 Januari 2023 beliau telah menerima surat dari peguamcara plaintif berkenaan tuntutan bagi kereta yang diberikan kepada defendan oleh keluarga plaintif semasa perkahwinan (eksh HA2). Mahkamah mendapati tiada sebarang bukti yang dikemukakan oleh plaintif berkenaan pengabaian yang dibuat oleh defendan terhadap plaintif dalam perkahwinan mereka.

[14] On the issue of maintenance, the learned magistrate made reference to s 78 of the Law Reform (Marriage and Divorce) Act 1976 and cases such as *Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib (Responden Bersama)* [2010] MLJU 1333; [2010] AMEJ 0290; [2011] 6 CLJ 782; [2010] 3 MLRH 308, *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1998] AMEJ 0189; [1999] 5 CLJ 474; [1998] 4 MLRH 112, *Shilashshree Shirely Gomez v Raymond Shilendran a/l Simon* [2019] MLJU 1578; [2019] AMEJ 1615; [2019]CLJU 1977; [2019] MLRHU 1757 and *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 AMR 159; [2008] 4 CLJ 105; [2008] 1 MLRA 230.

[15] The basis for her findings is explained in the following paragraphs of the grounds of judgment.

> [16] Dalam kes ini, plaintif mendakwa beliau teiah diabaikan oleh defendan selepas dua bulan perkahwinan dan memohon untuk nafkah bulanan sebanyak RM2,000 sebulan tanpa sebarang asas atau keterangan sokongan serta mahkamah mendapati tiada sebarang resit atau bukti dikemukakan oleh plaintif yang menunjukkan

bahawa plaintif telah membelanjakan sebanyak RM2,000 sebulan dan melayakkan beliau untuk mendapatkan jumlah nafkah tersebut.

[17] Berkenaan pekerjaan, tiada bukti dikemukakan bahawa plaintif pernah bekerja sebelum atau semasa dalam perkahwinan selama dua bulan, selain pernyataan defendan bahawa plaintif pernah berkerja di restoran Kentucky Fried Chicken (KFC) sebelum mereka berkahwin dan kini sedang bekerja di Restoran A&W di Ipoh. Selain itu, plaintif memiliki Kad Orang Kurang Upaya (OKU) untuk masalah pembelajaran, di mana plaintif mendakwa beliau telah didiagnosis sebagai 'Attention Deficit Hyperactivity Disorder'. Walau bagaimanapun, bagi mengetahui tahap kesihatan mental secara lebih lanjut, plaintif tidak mengemukakan sebarang surat daripada pihak doktor yang dapat mengesahkan keadaan beliau secara teliti bagi dipertimbangkan dalam isu nafkah yang dipohon.

[18] Selain-itu, pihak defendan juga tidak mengemukakan sebarang dokumen berkenaan gaji beliau selain daripada pernyataan bahawa beliau bekerja sebagai pemandu lori dan menerima gaji bulanan sebanyak RM2,000. Sepertimana yang telah diputuskan dalam kes *Shilashshree Shirely Gomez v Raymond Shilendran a/l Simon* [2019] MLJU 1578; [2019] MLRHU 1757 dan *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 1 MLRS 230, mahkamah perlu mengambilkira kemampuan pihak defendan dan keperluan plaintif dalam memutuskan isu pemberian nafkah, dalam saman pemula yang difailkan oleh pihak plaintif tiada butiran dan bukti yang mencukupi. Pihak pemohon juga gagal memperincikan perbelanjaan yang telah ditanggung oleh pihak responden semasa berada di rumah perkahwinan dan keadaan kewangan responden sebenarnya dengan bukti yang kukuh.

THE LAW AND THE APPLICABLE PRINCIPLES

[16] The starting point is the Married Women and Children (Maintenance) Act 1950. Section 3 of the said act provides as follows:

3 Court may make order for maintenance of wife and children

(1) If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife or such child, in proportion to the means of such person, as to the court seems reasonable.

(2) If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, a court, upon due proof thereof, may order such person to make such monthly allowance, as to the court seems reasonable.

(3) Such allowance shall be payable from the date of such neglect or refusal or from such later date as may be specified in the order.

For purposes of the present matter and appeal, the relevant provisions are s 3(1) and (3).

[17] For the sake of completeness, reference should also be made to s 5 of the

said Act. Section 5(1) expressly deals with a situation where the wife is 'living separate from the husband' but the husband 'offers to maintain his wife on condition of her living with him, and his wife refuses to do so'. That relevant provision states:

> 5 Wife living separate from husband
>
> (1) If any person, against whom an order has been applied for or made for the maintenance of his wife, offers to maintain his wife on condition of her living with him, and his wife refuses to do so, the court shall consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if it is satisfied that such person is living in adultery or for any other reason it is just so to do.

[18] The following sub-s (2) states the grounds whereby the wife shall not be entitled to receive and allowance. It reads as follows:

> Cases in which wife not entitled to allowance
>
> (2) No wife shall be entitled to receive an allowance from her husband under this Act if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband.

[19] As noted in para [14] above, the learned magistrate made reference to s 78 of the Law Reform (Marriage and Divorce) Act 1976. Section 78 states the approach to be adopted by the court when assessing the maintenance to be paid to the wife or former wife. Once again, to ensure thoroughness, this section is to be read together with the preceding s 77 of the Law Reform (Marriage and Divorce) Act 1976. Both these section deal with the aspect of 'maintenance of spouse'.

[20] Section 77 of the Law Reform (Marriage and Divorce) Act 1976 states that:

> 77 Power for court to order maintenance of spouse
>
> (1) The court may order a man to pay maintenance to his wife or former wife —
>
> (a) during the course of any matrimonial proceedings;
>
> (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
>
> (c) if, after a decree declaring her presumed to be dead, she is found to be alive.
>
> (2) The court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order.

And s 78 provides that:

> 78 Assessment of maintenance
>
> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

THE DECISION OF THIS COURT

[21] It is evident that there are two pieces of legislation that deal with the duty to maintain spouse and children, that is, the Married Women and Children (Maintenance) Act 1950 and the Law Reform (Marriage and Divorce) Act 1976.

[22] The question that arise is whether the provisions relating to the maintenance of wife and children in the Married Women and Children (Maintenance) Act 1950 and the Law Reform (Marriage and Divorce) Act 1976 may only be invoked alternatively or are available to an applicant conjunctively.

[23] It is obvious to this court that the provision in s 3 of the Married Women and Children (Maintenance) Act 1950 operates while the marriage is still subsisting whilst s 77 and 78 of the Law Reform (Marriage and Divorce) Act 1976 are activated when the matrimonial jurisdiction of the court has been attracted by the presentation of a petition for divorce, judicial separation or nullity of marriage.

[24] In the present matter and appeal, since the matrimonial jurisdiction of the court has not been attracted, the appellant was right in relying on s 3 of the Married Women and Children (Maintenance) Act 1950.

[25] In considering the present matter and appeal, the court should engage in a two-stage determination/test. The first stage involves a determination of the question of whether an order for maintenance should be made. If the answer is in the negative, the matter ends there. If the answer is in the affirmative, the court should then proceed to the second stage to assess the amount to be paid.

The first stage — Order for maintenance

A **[26]** The court is indeed empowered to make an order for the maintenance of a wife or children during the subsistence of marriage. However, it should be noted that s 3 of the Married Women and Children (Maintenance) Act 1950 is permissive in nature.

B **[27]** For purposes of this matter and appeal, the power should be exercised if the following conditions are fulfilled, namely:

(a) any person neglects or refuses to maintain his wife;

C (b) and the wife is unable to maintain herself.

These conditions are not only to be read conjunctively but they can only be deemed as satisfied 'upon due proof thereof'.

D **[28]** This court is satisfied that the learned magistrate had correctly addressed her mind to the above issues and did not run into error when she concluded that the appellant had not presented sufficient evidence to substantiate claims of neglect. On this ground alone, the learned magistrate was right in rejecting the appellant's claim.

E *The second stage — Assessment*

[29] As the answer to Stage One is in the negative, an appraisal of the second-stage assessment is rendered superfluous. Be that as it may, in the event that this matter is taken further to the Court of Appeal and the Court of Appeal F disagrees with the findings by the lower court and this court that the appellant had not presented sufficient evidence to substantiate claims of neglect, an assessment will have to be undertaken.

G **[30]** As noted, the learned magistrate had made reference to s 78 of the Law Reform (Marriage and Divorce) Act 1976 and a number of authorities cited in para [14] above. Prior to the hearing of the oral submissions in this appeal, the parties and the magistrate court had proceeded on the basis that in assessing the amount of maintenance to be paid, the court ought to be guided by the H principles as outlined in s 78 of the Law Reform (Marriage and Divorce) Act 1976 and the cases that have considered and applied this provision.

[31] It has been pointed out that the provision in s 3 of the Married Women I and Children (Maintenance) Act 1950 operates while a marriage is still subsisting, as in the present matter and appeal. On the other hand, s 77 and 78 of the Law Reform (Marriage and Divorce) Act 1976 are only activated when the matrimonial jurisdiction of the court has been attracted by the presentation of a petition for divorce, judicial separation or nullity of marriage.

[32] That being the case, in determining the amount of maintenance to be paid to a wife, the courts are bound by the considerations, if any, as stated in the Married Women and Children (Maintenance) Act 1950. In this regard, s 3 of the Married Women and Children (Maintenance) Act 1950 merely empowers the courts to make an order for the payment of maintenance. The absence of an express provision on assessment or maintenance, like the one in s 78 of the Law Reform (Marriage and Divorce) Act 1976 is evident. However, s 5 of the Married Women and Children (Maintenance) Act 1950 lists out a number of circumstances disentitling a wife from receiving a maintenance. None of these circumstances are present in the instant matter and appeal.

[33] It is thus understandable why the appellant, respondent and the magistrate court had made reference to s 78 of the Law Reform (Marriage and Divorce) Act 1976 and the cases that had commented on and applied the said provision. The principles as laid down in s 78 of the Law Reform (Marriage and Divorce) Act 1976 are explicit. The court is required to 'base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be'. In addition, the court shall also 'have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage'.

[34] As far as the case law is concerned, Evrol Mariette Peters J in *CKW v HSL* [2022] MLJU 1361; [2022] MLRHU 1198 explained that 'an award for maintenance must be based on the 'means and needs' and not on 'means and wants"'. Her Ladyship further said that 'the requirement of 'means and needs' is conjunctive, which means that it is not only the petitioner's needs that have to be considered, it is also the respondent's means that need to be addressed'.

[35] It is trite that in addition to the above 'means and needs' test, other factors that a court will take into account when assessing maintenance include the duration of the marriage and the respective contributions by the parties to the welfare of the family.

[36] In view of the absence of a similar s 78 provision in the Married Women and Children (Maintenance) Act 1950, this court if of the considered view that when s 3 of the Married Women and Children (Maintenance) Act 1950 is invoked, a court is permitted to adopt and apply the principles as applied under the Law Reform (Marriage and Divorce) Act 1976. That being the case, this court is still of the view that the learned magistrate had arrived at the correct conclusion when she disallowed the appellant's claim.

[37] The decision of the magistrate court is affirmed. The appellant to pay costs of RM5,000 to the respondent, subject to allocatur.

A POSTSCRIPT

[38] This court cannot help but express displeasure at the gender-biased language in s 3 (together with s 5) of the Married Women and Children (Maintenance) Act 1950. The provision insinuates that only men can be breadwinners in a family structure. To be clear, the Married Women and Children (Maintenance) Act 1950 is a commendable piece of legislation. As noted in the opening remarks of this judgment, its aim is to prevent 'individuals' from becoming destitute due to family breakdowns. However, the 'individuals' to be protected should also include husbands. The act's understanding of vulnerable parties is rooted in traditional family structures. While traditional family structures should be cherished, it is time for this act to be updated to be gender-neutral. Although ss 77 and 78 of the Law Reform (Marriage and Divorce) Act 1976 are somewhat more gender-neutral in their application, s 77(2), which allows a court to order a woman to pay maintenance to her husband or former husband on condition that he 'is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health,' remains unsatisfactory. This is because such a proviso fails to address the concern highlighted by this court.

Appeal dismissed with costs.

Reported by Muhamad Azham Marwan